

AN ACT

relating to energy savings performance contracts and energy efficiency planning.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 44.901, Education Code, is amended by amending Subsection (a) and adding Subsection (f-1) to read as follows:

(a) In this section, "energy savings performance contract" means a contract for energy or water conservation measures to reduce energy or water consumption or operating costs of new or existing school facilities in which the estimated savings in utility costs resulting from the measures is guaranteed to offset the cost of the measures over a specified period. The term includes a contract for the installation or implementation of:

(1) insulation of a building structure and systems within the building;

(2) storm windows or doors, caulking or weatherstripping, multiglazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, or other window or door system modifications that reduce energy consumption;

(3) automatic energy control systems, including computer software and technical data licenses;

(4) heating, ventilating, or air-conditioning system modifications or replacements that reduce energy or water

1 consumption;

2 (5) lighting fixtures that increase energy  
3 efficiency;

4 (6) energy recovery systems;

5 (7) electric systems improvements;

6 (8) water-conserving fixtures, appliances, and  
7 equipment or the substitution of non-water-using fixtures,  
8 appliances, and equipment;

9 (9) water-conserving landscape irrigation equipment;

10 (10) landscaping measures that reduce watering  
11 demands and capture and hold applied water and rainfall, including:

12 (A) landscape contouring, including the use of  
13 berms, swales, and terraces; and

14 (B) the use of soil amendments that increase the  
15 water-holding capacity of the soil, including compost;

16 (11) rainwater harvesting equipment and equipment to  
17 make use of water collected as part of a storm-water system  
18 installed for water quality control;

19 (12) equipment for recycling or reuse of water  
20 originating on the premises or from other sources, including  
21 treated municipal effluent;

22 (13) equipment needed to capture water from  
23 nonconventional, alternate sources, including air conditioning  
24 condensate or graywater, for nonpotable uses;

25 (14) metering equipment needed to segregate water use  
26 in order to identify water conservation opportunities or verify  
27 water savings; or

1           (15) other energy or water conservation-related  
2 improvements or equipment, including improvements or equipment  
3 relating to renewable energy or nonconventional water sources or  
4 water reuse.

5           (f-1) Notwithstanding other law, the board may use any  
6 available money, other than money borrowed from this state, to pay  
7 the provider of the energy or water conservation measures under  
8 this section, and the board is not required to pay for such costs  
9 solely out of the savings realized by the school district under an  
10 energy savings performance contract. The board may contract with  
11 the provider to perform work that is related to, connected with, or  
12 otherwise ancillary to the measures identified in the scope of an  
13 energy savings performance contract.

14           SECTION 2. Section 44.902, Education Code, is amended by  
15 adding Subsection (b-1) and amending Subsection (d) to read as  
16 follows:

17           (b-1) For purposes of Subsection (b), a strategy for  
18 achieving energy efficiency includes facility design and  
19 construction.

20           (d) The board of trustees may submit the plan required under  
21 Subsection (a) to the State Energy Conservation Office for the  
22 purposes of determining whether funds available through loan  
23 programs administered by the office or tax incentives administered  
24 by the state or federal government are available to the district.  
25 The board may not disallow any proper allocation of incentives.

26           SECTION 3. Section 51.927, Education Code, is amended by  
27 amending Subsection (a) and adding Subsection (g-1) to read as

1 follows:

2 (a) In this section, "energy savings performance contract"  
3 means a contract for energy or water conservation measures to  
4 reduce energy or water consumption or operating costs of new or  
5 existing institutional facilities in which the estimated savings in  
6 utility costs resulting from the measures is guaranteed to offset  
7 the cost of the measures over a specified period. The term includes  
8 a contract for the installation or implementation of:

9 (1) insulation of a building structure and systems  
10 within a building;

11 (2) storm windows or doors, caulking or weather  
12 stripping, multiglazed windows or doors, heat-absorbing or  
13 heat-reflective glazed and coated window or door systems, or other  
14 window or door system modifications that reduce energy consumption;

15 (3) automatic energy control systems, including  
16 computer software and technical data licenses;

17 (4) heating, ventilating, or air conditioning system  
18 modifications or replacements that reduce energy or water  
19 consumption;

20 (5) lighting fixtures that increase energy  
21 efficiency;

22 (6) energy recovery systems;

23 (7) electric systems improvements;

24 (8) water-conserving fixtures, appliances, and  
25 equipment or the substitution of non-water-using fixtures,  
26 appliances, and equipment;

27 (9) water-conserving landscape irrigation equipment;

(10) landscaping measures that reduce watering demands and capture and hold applied water and rainfall, including:

(A) landscape contouring, including the use of berms, swales, and terraces; and

(B) the use of soil amendments that increase the water-holding capacity of the soil, including compost;

(11) rainwater harvesting equipment and equipment to make use of water collected as part of a storm-water system installed for water quality control;

(12) equipment for recycling or reuse of water originating on the premises or from other sources, including treated municipal effluent;

(13) equipment needed to capture water from nonconventional, alternate sources, including air conditioning condensate or graywater, for nonpotable uses;

(14) metering equipment needed to segregate water use in order to identify water conservation opportunities or verify water savings; or

(15) other energy or water conservation-related improvements or equipment, including improvements or equipment related to renewable energy or nonconventional water sources or water reuse.

(g-1) Notwithstanding other law, the board may use any available money, other than money borrowed from this state, to pay the provider of the energy or water conservation measures under this section, and the board is not required to pay for such costs solely out of the savings realized by the institution of higher

1 education under an energy savings performance contract. The board  
2 may contract with the provider to perform work that is related to,  
3 connected with, or otherwise ancillary to the measures identified  
4 in the scope of an energy savings performance contract.

5 SECTION 4. Section 2166.406, Government Code, is amended by  
6 amending Subsections (a) and (g) and adding Subsection (f-1) to  
7 read as follows:

8 (a) In this section, "energy savings performance contract"  
9 means a contract for energy or water conservation measures to  
10 reduce energy or water consumption or operating costs of new or  
11 existing governmental facilities in which the estimated savings in  
12 utility costs resulting from the measures is guaranteed to offset  
13 the cost of the measures over a specified period. The term includes  
14 a contract for the installation of:

15 (1) insulation of a building structure and systems  
16 within the building;

17 (2) storm windows or doors, caulking or weather  
18 stripping, multiglazed windows or doors, heat absorbing or heat  
19 reflective glazed and coated window or door systems, or other  
20 window or door system modifications that reduce energy consumption;

21 (3) automatic energy control systems, including  
22 computer software and technical data licenses;

23 (4) heating, ventilating, or air-conditioning system  
24 modifications or replacements that reduce energy or water  
25 consumption;

26 (5) lighting fixtures that increase energy  
27 efficiency;

- 1           (6) energy recovery systems;
- 2           (7) electric systems improvements;
- 3           (8) water-conserving fixtures, appliances, and
- 4 equipment or the substitution of non-water-using fixtures,
- 5 appliances, and equipment;
- 6           (9) water-conserving landscape irrigation equipment;
- 7           (10) landscaping measures that reduce watering
- 8 demands and capture and hold applied water and rainfall, including:
- 9               (A) landscape contouring, including the use of
- 10 berms, swales, and terraces; and
- 11               (B) the use of soil amendments that increase the
- 12 water-holding capacity of the soil, including compost;
- 13           (11) rainwater harvesting equipment and equipment to
- 14 make use of water collected as part of a storm-water system
- 15 installed for water quality control;
- 16           (12) equipment for recycling or reuse of water
- 17 originating on the premises or from other sources, including
- 18 treated municipal effluent;
- 19           (13) equipment needed to capture water from
- 20 nonconventional, alternate sources, including air conditioning
- 21 condensate or graywater, for nonpotable uses;
- 22           (14) metering equipment needed to segregate water use
- 23 in order to identify water conservation opportunities or verify
- 24 water savings; or
- 25           (15) other energy or water conservation-related
- 26 improvements or equipment including improvements or equipment
- 27 related to renewable energy or nonconventional water sources or

1 water reuse.

2        (f-1) Notwithstanding other law, the state agency may use  
3 any available money, other than money borrowed from this state, to  
4 pay the provider of the energy or water conservation measures under  
5 this section, and the state agency is not required to pay for such  
6 costs solely out of the savings realized by the state agency under  
7 an energy savings performance contract. The state agency may  
8 contract with the provider to perform work that is related to,  
9 connected with, or otherwise ancillary to the measures identified  
10 in the scope of an energy savings performance contract.

11        (g) An energy savings performance contract with respect to  
12 ~~[existing]~~ buildings or facilities may be financed:

13                (1) under a lease/purchase contract that has a term  
14 not to exceed 20 years from the final date of installation and that  
15 meets federal tax requirements for tax-free municipal leasing or  
16 long-term financing, including a lease/purchase contract under the  
17 master equipment lease purchase program administered by the Texas  
18 Public Finance Authority under Chapter 1232;

19                (2) with the proceeds of bonds; or

20                (3) under a contract with the provider of the energy or  
21 water conservation measures that has a term not to exceed the lesser  
22 of 20 years from the final date of installation or the average  
23 useful life of the energy or water conservation or usage measures.

24        SECTION 5. Section 302.001(4), Local Government Code, is  
25 amended to read as follows:

26                (4) "Energy savings performance contract" means a  
27 contract between a local government and a provider for energy or



1 water conservation or usage measures in which the estimated energy  
2 savings, increase in billable revenues, or increase in meter  
3 accuracy resulting from the measures is subject to guarantee to  
4 offset the cost of the energy or water conservation or usage  
5 measures over a specified period. The term includes a contract for  
6 the installation or implementation of the following in new or  
7 existing facilities, including all causally connected work:

8 (A) insulation of a building structure and  
9 systems within the building;

10 (B) storm windows or doors, caulking or weather  
11 stripping, multiglazed windows or doors, heat-absorbing or  
12 heat-reflective glazed and coated window or door systems, or other  
13 window or door system modifications that reduce energy consumption;

14 (C) automatic energy control systems, including  
15 computer software and technical data licenses;

16 (D) heating, ventilating, or air-conditioning  
17 system modifications or replacements that reduce energy or water  
18 consumption;

19 (E) lighting fixtures that increase energy  
20 efficiency;

21 (F) energy recovery systems;

22 (G) electric systems improvements;

23 (H) water-conserving fixtures, appliances, and  
24 equipment or the substitution of non-water-using fixtures,  
25 appliances, and equipment;

26 (I) water-conserving landscape irrigation  
27 equipment;

(J) landscaping measures that reduce watering demands and capture and hold applied water and rainfall, including:

(i) landscape contouring, including the use of berms, swales, and terraces; and

(ii) the use of soil amendments that increase the water-holding capacity of the soil, including compost;

(K) rainwater harvesting equipment and equipment to make use of water collected as part of a storm-water system installed for water quality control;

(L) equipment for recycling or reuse of water originating on the premises or from other sources, including treated municipal effluent;

(M) equipment needed to capture water from nonconventional, alternate sources, including air-conditioning condensate or graywater, for nonpotable uses;

(N) metering or related equipment or systems that improve the accuracy of billable-revenue-generation systems; or

(O) other energy or water conservation-related improvements or equipment, including improvements or equipment relating to renewable energy or nonconventional water sources or water reuse.

SECTION 6. Section 302.004, Local Government Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) Notwithstanding other law, the governing body of a local government may use any available money, other than money borrowed from this state, to pay the provider of the energy or water conservation measures under this section, and the governing body is

1 not required to pay for such costs solely out of the savings  
2 realized by the local government under an energy savings  
3 performance contract. The governing body may contract with the  
4 provider to perform work that is related to, connected with, or  
5 otherwise ancillary to the measures identified in the scope of an  
6 energy savings performance contract.

7       SECTION 7. This Act takes effect September 1, 2011.

H.B. No. 1728

David Newkirk

President of the Senate

Joe Straus

Speaker of the House

I certify that H.B. No. 1728 was passed by the House on May 12, 2011, by the following vote: Yeas 143, Nays 2, 3 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1728 on May 26, 2011, by the following vote: Yeas 143, Nays 0, 2 present, not voting.

Robert Haney

Chief Clerk of the House

I certify that H.B. No. 1728 was passed by the Senate, with amendments, on May 24, 2011, by the following vote: Yeas 31, Nays 0.

Daisy Spaw

Secretary of the Senate

APPROVED:

17 JUN 11

Date

Rick Perry

Governor

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE

4:27 PM O'CLOCK

JUN 17 2011

John R. Edwards

Secretary of State